

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

April 22, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, April 22, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the A/B/C Conference Room in the Stafford County Government Center. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann stated the By-Laws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls, Cecelia Kirkman, John Overbey, Robert Gibbons, Michael Levy and Steven Beauch

Members Absent: None

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Ackermann asked if there were any changes to the advertised agenda.

Mrs. Musante stated there were no changes to the agenda.

Mr. Ingalls stated his employer sometimes works with the applicant but not regarding this case, and he would be able to render a vote.

Mr. Gibbons stated it must be disclosed by members of the Board any communication with the applicant.

Ms. Kirkman stated that was not in the bylaws and would not be mandatory until added to the bylaws.

Mr. Ackermann stated any member of the Board would not require it until revised bylaws were accepted. He asked if any member of the Board had any conflict of interest regarding the case.

Mr. Levy stated he worked for Mr. Leming from 1991 to 2000 and had been eight (8) years since he was employed by Mr. Leming's office. He stated he was not employed during the dates listed for the cases being presented and would be able to participate in the case.

PUBLIC HEARINGS

A08-2/2800052 - H. CLARK LEMING - Appeal of the Zoning Administrator's determination letter dated December 10, 2007, regarding vesting of Stafford County Code, Section 28-62, "Chesapeake Bay Preservation Area Overlay District", for Vulcan Quarry Westlake Access Road.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mrs. Musante presented the staff report.

Mr. Gibbons asked if there was a difference in the packets received.

Mrs. Musante stated there was no difference.

Clark Leming, Leming and Healy, reviewed the background provided to the Board. He stated appeals had been dropped based on the June 2, 2004 Zoning Administrator determination. He stated in 2007 Vulcan material submitted a construction plan application and the County stated they were required to conduct a Water Quality Impact Assessment due to Chesapeake Bay regulation, Zoning Ordinance Section 28-62. He stated Vulcan materials completed the assessment and the appeals presented at this meeting were on behalf of the beneficiaries and property owners. He stated there was a pending preliminary plan and on hold due to the appeal of 2007. He stated he would reference Mr. Judy's three arguments in the letter received. He stated Westlake Development was the owner of the surrounding properties and Vulcan Haul Road was developed because of an agreement between Vulcan Materials and the underlying property owners. He stated Westlake Development has a preliminary subdivision plan pending the outcome of the appeal. He stated both parties were beneficiaries of the 2002 and 2004 zoning determination. He addressed Mr. Judy's second argument regarding Virginia Code Section 15.2-2311(C); a Zoning Administrator's determination cannot be reversed or modified after sixty days, absent fraud or malfeasance. He stated Mr. Judy suggested the 15.2-2311(C) did not apply because the Zoning Administrator was attempting to interpret state law. He stated the code that allowed the Zoning Administrator to interpret state law. He stated the 2002 and 2004 determinations were things decided that could not be changed. He stated the Zoning Administrator wrongfully modified the 2004 determination of the prior Zoning Administrator. He discussed Mr. Judy's third point pertaining to Chesapeake Bay Regulations and there was no requirement to put Chesapeake Bay Regulations in the Zoning Ordinance. He stated Mr. Judy stated the Chesapeake Bay regulations were state law. He stated Mr. Schardein was correct in his interpretation of the 2004 determination.

Mr. Gibbons asked for clarification regarding the appeals dropped in 2004.

Mr. Leming stated in 2004 the Zoning Administrator issued a determination that indicated that the Chesapeake Bay State regulations would be enforced for all properties. He stated certain vested properties filed specific appeals due to the February 2004 determination; because of the supplemental determination issued by Mr. Schardein in June 2004, Mr. Leming withdrew the February 2004 appeals.

Mr. Ingalls stated on the 2004 determination; the County Attorney's signature was not affixed to the letter.

Mr. Leming stated he spoke with Ms. White and did not think the State Code required a signature. He stated Ms. Hudson provided a vesting determination in December 2007 with no County Attorney's signature.

Mr. Ingalls asked if the Chesapeake Bay Ordinance does not have to be in the Zoning Ordinance.

Mr. Leming stated correct and most localities have the Chesapeake Bay Regulations as a separate ordinance.

Mr. Ackermann asked when the preliminary subdivision plan was submitted.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Leming stated the preliminary subdivision plan was submitted in December 2007.

Mr. Ackermann asked about the agreement Vulcan has with Westlake.

Mr. Leming stated the agreement was regarding the location for the road and purpose of the road. He stated Westlake had a contract with GHA to purchase a portion of the road, the subject of a 2006 proffer amendment adopted by the Board of Supervisors. He stated the standard was whether the agreeing party had property interest or an equitable interest. He stated the vested right accrued to all property owners. He stated the County stated the 2004 determination was not valid and unenforceable; the property right was placed in jeopardy. He stated if this was only applicable to Vulcan materials, he would withdraw the appeal but that was not done.

Mr. Ackermann asked for clarification regarding vesting of rights.

Mr. Leming stated what Ms. Hudson did cannot occur.

Mr. Ackermann stated the letter from Ms. Hudson dated December 2007 showed copies went to the County Attorney.

Mr. Leming stated state law required there be consultation with the County Attorney.

Ms. Kirkman stated Chesapeake Bay Regulations specify different treatments of properties based on when lots were recorded and asked if the intent of the General Assembly was to allow the Chesapeake Bay Act to apply to properties regardless of whether they were vested.

Mr. Leming stated that was possible that was what the intent was but was not covered by the regulations. He stated what the intent was that State Code 10.1 was to stand on it own and not be affected by other regulations. He stated the regulations provide certain vesting rights for individual lots of record.

Ms. Kirkman stated the county ordinance specifies those regulations and by specifying the extent of the vesting of lots were based on the year they were recorded; she asked if that was the only vesting to those lots regarding the Chesapeake Bay Act.

Mr. Leming stated no.

Ms. Kirkman asked Mr. Leming if Mr. Schardein made a determination that a rezoning request was approved, would that be a valid determination.

Mr. Leming stated no.

Ms. Kirkman stated that was because Mr. Schardein had no state authority to make that determination and if there was no vesting for Chesapeake Bay how he could make a determination.

Mr. Leming stated they disagreed on Chesapeake Bay regulations.

Ms. Kirkman asked how Westlake had been harmed by the Vulcan determination.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Leming stated it was harmful to any property owner to have property right threatened or aggregated and if the Zoning Administrator decision stands, that would be the case. He stated Westlake Development was protecting its interest and believes was an unlawful determination as to the vested rights. He stated as the decision stands, Westlake vested rights regarding the 2004 determination would be non-existent.

Ms. Kirkman asked what the actual harm was.

Mr. Leming stated that was what he stated previously.

Ms. Kirkman confirmed Mr. Leming was referring to a threat of something happening in the future.

Mr. Leming stated the applicant did not have to demonstrate a specific harm; Westlake would have to demonstrate that a right had been jeopardized. He stated the Zoning Administrator indicated the 2004 zoning determination was not valid.

Ms. Kirkman asked if Westlake was told their rights had been jeopardized regarding an application that had occurred.

Mr. Leming stated the County would not process an application because they appealed the determination.

Ms. Kirkman asked if the only harm would be something that may happen in the future.

Mr. Leming stated that was his position.

Mr. Levy stated regarding the reliance issue, what actions the property owner had taken.

Mr. Leming stated the property owners had spent considerable money on the development plans, in which the preliminary subdivision plan falls into that category, the water and sewer studies, and the environmental studies that had been completed to develop the property.

Ms. Kirkman asked how much was spent on the studies.

Mr. Leming stated approximately \$250,000.

Ms. Kirkman asked if any of the studies would have had to be completed if the applicant would not have followed the Chesapeake Bay Act and asked if all of the studies were required in order to develop the project.

Mr. Leming stated the applicant would be required to do a Water Quality Impact Assessment.

Ms. Kirkman stated the applicant had not completed a Water Quality Impact Assessment.

Mr. Leming stated it had not been completed because the applicant needed this vesting.

Ms. Kirkman stated all of the studies completed by the applicant were studies that would have had to been completed regardless.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Steve Judy, Stafford County Deputy County Attorney, stated he was representing the Zoning Administrator. He stated he would discuss the harm that has or may come to the applicant in both the cases. He stated when used in the statute the term aggrieved, and in order to come before the BZA an applicant had to be aggrieved, and gave the definition. He stated he agreed with Ms. Kirkman and was not sure what was affected by owners of the Westlake property. He stated the Department of Planning and Zoning did have an application that had not been accepted and was on hold because the State Code required that the application be stayed while an appeal was before the BZA. He stated the county was not trying to slow the process; it was because the applicant filed the appeals. He stated he had not seen the preliminary plans and did not know if the plans indicate any direct harm to the applicant because of Ms. Hudson's 2007 determination. He stated in Mr. Leming's letter to the Zoning Administrator he asked about Vulcan Road and whether they would be required to submit a Water Quality Impact Assessment and Ms. Hudson return letter indicated the determination was limited to a Water Quality Impact Assessment being limited to roads located within an RPA. He stated the question would be if there was something in the letter provided by Ms. Hudson that had affected the Westlake plan development for the property that would require the applicant to expend money or be negatively affected because of the requirement of Vulcan to submit a Water Quality Assessment. He stated he did not know the answer to that question because there was no information from Westlake development to know whether they are required to have a road across an RPA. He stated the applicant had not provided information to suggest any direct impact because of the determination made by Ms. Hudson. He stated Mr. Leming had provided the County with the best opportunity to deal with unfunded mandates sent by the State and place in the Zoning Ordinance and have the Zoning Administrator rule them as inapplicable and the applicant would not have to follow them. He stated the Chesapeake Bay Act was created and adopted in 1988, as an attempt to deal with continuing pollution and degradation of the Chesapeake Bay and tributaries. He stated state legislature determined that it was necessary to implement regulation that would help prevent runoff and pollution to those tributaries in an effort to clean up the Bay. He stated Mr. Leming indicated since the County put the Chesapeake Bay Act in the Zoning Ordinance it would be left to interpretation, which was wrong. He read State Code Chapter 21 Title 10.1 that stated the County was told to incorporate the Chesapeake Bay Act into the Zoning Ordinance; the County did not have a choice. He stated Mr. Leming indicated since the Zoning Administrator made a determination, the county was stuck with it and in Ms. Hudson's determination there was nothing stated about the applicants vesting. He stated the applicant would be vested to the zoning requirements that were in place at the time they received a substantial governmental act. He stated there had been two Attorney General opinions that have stated the rights were protected, however, within certain time periods there were certain things to consider. He stated there was nothing that stated an applicant would not have to comply with the Chesapeake Bay Act to the greatest extent possible. He stated there was never a statement made stating Westlake lost its vesting and was trying to indicate the 2004 determination made by Mr. Schardein and there was no provision for an administrative official of the county to eviscerate the Chesapeake Bay requirement by writing a letter, which was what Mr. Leming's case referenced.

Mr. Levy stated looking at the June 2, 2004 letter, the list of developments were vested to the Chesapeake Bay Act to those regulations in place at the effective date of each individual vesting, all the of the development were vested for new Chesapeake Bay Act regulations adopted in December 2003. He stated the statement should not be read to be consistent with Ms. Hudson statement written in 2007. He stated those could not be reconciled.

Mr. Judy stated that was correct because he was not involved in discussions that occurred regarding Mr. Schardein letter.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Levy stated the statements were inconsistent.

Mr. Judy agreed.

Mr. Levy asked if they could not be reconciled, how a subsequent Zoning Administrator could alter the determination of a previous Zoning Administrator.

Mr. Judy stated if the interpretation of Mr. Schardein 2004 letter was exempt from any Chesapeake Bay requirement; no local Zoning Administrator had the authority to alter state law, based on that, the letter issued by Mr. Schardein was without effect. He stated he agreed with the 2002 letter that stated the applicant was vested to the traditional zoning requirements in place at the time the applicant received their rezoning. He stated the density and setbacks provided in the proffers of record in 1989 the applicant would be vested to and cannot adopt additional zoning law under the guise of Article 7, Chapter 22 of Title 15.2.

Mr. Gibbons stated he would like to see the 2004 determination and the appeals that followed.

Mr. Judy stated under Virginia Code if a person appeals a decision of the Zoning Administrator that would stay all activities.

Mr. Gibbons said Mr. Judy stated he had not seen the preliminary subdivision plan and asked how the applicant was aggrieved if he had not reviewed the plan.

Mr. Judy stated up to this point he did not know if the applicant had been aggrieved.

Mr. Gibbons stated that application would reveal what the applicant filed and could be in disagreement with Ms. Hudson's ruling and could have seen what was aggrieved.

Mr. Judy stated there was never a disagreement that the Westlake property was vested; there was a difference in understanding regarding vesting and requirements. He stated the regulations as promulgated by the Chesapeake Bay Board, stated when certain properties were recorded as of certain dates the affect of the Chesapeake Bay would be limited. He stated that in all cases with traditional vesting of property and on the Westlake property, the affect of the Chesapeake Bay would be limited. He stated if they were vested to a particular vesting or setback at the time of the rezoning approval with proffers, then Chesapeake Bay when applied could not affect the vested rights. He stated the Chesapeake Bay Act would have to be applied to the extent possible.

Mr. Gibbons stated the state regulation introduced by a legislative body could overrule a Supreme Court case.

Mr. Judy stated nothing had been overruled.

Mr. Gibbons asked if there was any written documentation available between the County Attorney's office and Mr. Schardein.

Mr. Judy stated he had not been privy to any documentation.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Ms. Kirkman stated her understanding was that vesting determinations apply to specific parcels; one item that was different between the 2002 and 2004 letter was the 2002 letter specified specific parcels and the 2004 letter does not reference a single. She asked if vesting was allowed how the 2004 letter could not reference any parcels.

Mr. Judy stated normally a determination would be a specific property but could not make specific comments regarding the letter.

Mr. Beauch asked if the Chesapeake Bay Act was incorporated in the Zoning Ordinance within the County.

Mr. Judy stated yes.

Mr. Beauch stated it was the Zoning Administrator's job to interpret the ordinance and asked Mr. Judy if he felt the previous Zoning Administrator should not have made decision in regards to the Chesapeake Bay Act because it was implemented through state law.

Mr. Judy read from Article 7, Chapter 22, of Title 15.2, which stated the Zoning Administrator's ability to make determinations or opinions were limited. He stated the Zoning Administrator authority was limited to the portions of the Zoning Ordinance that come out of that portion of the state code. He stated the Chesapeake Bay Act came out of Title 10.1 in the state code, which was an entirely different section and was instructed to be incorporated into the Zoning Ordinance.

Mr. Beauch asked if Mr. Judy was arguing the Zoning Administrator should not render decisions regarding the Chesapeake Bay Act.

Mr. Judy stated that was correct.

Mr. Gibbons asked if Mr. Judy thought the County made a mistake in the issuance of the determination. He asked if Mr. Schardein was interviewed to ask why the determination was made.

Mr. Judy stated he spoke with Mr. Schardein and the interpretation given regarding the vesting statute was erroneous. He stated the vesting statute 15.2-2307 identified a three level requirement for determining if an applicant had vesting. He stated when he spoke with the former Zoning Administrator his understanding was only one of the three levels needed to be present.

Mr. Ingalls stated most determinations were made prior to any action taken and asked if the applicant would be aggrieved.

Mr. Judy stated there was a difference between giving an opinion and making a determination. He stated in the case of Westlake the applicant had a particular use in mind but had not showed the County and the decision of the Zoning Administrator affects Westlake because that was what the applicant said; there was nothing to go on. He stated Westlake proffered buffers equal to or greater than the Chesapeake Bay Act required and was not sure where an aggrieved impact came from.

Mr. Ingalls asked if the County appealed the 2004 decision.

Mr. Judy stated he did not know what happened after the letter was sent; there was no official appeal.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Ingalls asked in the letter provided by the County Attorney; what was the project listed within the letter.

Mr. Judy stated the project pertained to the Westlake Project.

Mr. Ingalls asked if the project referred to Westlake or the Vulcan Road Project.

Mr. Judy stated if referring to Ms. Hudson's December 2007 letter, which was in direct response to an email sent by Mr. Leming; it referenced the road project. He stated it did not affect the traditional vested rights. He stated the Chesapeake Bay Act requirements state that even if vested the Chesapeake Bay Act must be applied to the extent possible; it would be applied to protect the environment.

Mr. Leming asked the Board to review Mr. Judy's memorandum; he cited a case Vulcan Materials Company versus the Board of Supervisors regarding legal guidance on standing and what was an aggrieved party. Mr. Leming referenced Ms. Hudson's letter of December 10, 2007 and read the last sentence. He stated in the last sentence he was not sure what Ms. Hudson referenced, Westlake or Vulcan Materials. He stated that in the letter from Mr. Judy he stated the Zoning Administrator's determination was invalid. He stated there were two independent bases for vesting. He stated this case had a specific statute, which stated a Zoning Determination could not be changed after 60 days, absent malfeasance or fraud, which was not the case. He stated the Zoning Ordinance was a vehicle for Chesapeake Bay regulations. He stated the Attorney General opinion was the exact basis for which Mr. Schardein used in his 2004 determination. He stated each appeal included the parcel numbers and each letter to Mr. Schardein regarding the appeals contained the parcel numbers. He stated the appeals had been withdrawn based on the 2004 determination. He stated he was perplexed that Mr. Judy would present that Mr. Schardein was confused what vesting was in Virginia. He stated Mr. Schardein with the concurrence of the County Attorney issued dozens of vesting determinations.

Mr. Judy stated he provided the Board with knowledge of two separate Attorney General Opinions that address the issue. He stated while State Code 15.2-2115 protects traditional vesting, it does not mean any property was fully exempt from the application of the Chesapeake Bay Act. He stated there was no change in state law since 1991 and appears state legislature would agree with Attorney General opinions.

Motion:

Ms. Kirkman made a motion to uphold the Zoning Administrator's determination.

Mr. Ackermann seconded the motion.

Ms. Kirkman stated she made the motion to uphold the Zoning Administrator's decision for the following reasons; Westlake did not demonstrate they were aggrieved or substantially affected by the December 2007 determination. She stated she did not feel the 2004 decision rendered by Mr. Schardein had any validity. She stated finally, she did not believe the General Assembly intended there to be any "vesting" for Chesapeake Bay and when specified properties would be treated differently under Chesapeake Bay based on the date of which the lot was recorded, they were defining the limits of "vesting" that may exist for existing parcels.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Ackermann stated the statement that the applicant was harmed was weak and agreed with Mr. Judy. He stated he agreed with the comments made by Mr. Judy regarding vesting as it applies to the Chesapeake Bay Act.

Mr. Ingalls stated he would not be able to support the motion after hearing all the factors taken into account. He stated he agreed with the Zoning Administrator's determination the landowner or the aggrieved party would live with the determination. He stated he would agree they were vested but was not sure of what part of the Chesapeake Bay Ordinance they were vested.

Mr. Beauch stated he would not support the motion and agreed with Mr. Ingalls. He stated the time limit to appeal was beyond the time allowed to appeal.

Mr. Levy stated he would not support the motion and the County conceded the Zoning Administrator's determination could not be reconciled with the previous Zoning Administrator's determination.

Mr. Ingalls made a substitute motion to modify the Zoning Administrator's determination.

Ms. Kirkman stated the Board could not modify the determination; the only authority was to uphold or not uphold the determination.

Mr. Ackermann referenced 29-349(d) of the Zoning Ordinance, which stated, "the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from".

Motion:

Mr. Ingalls stated he would modify the Zoning Administrator's determination in the first paragraph, the last line; this determination explicitly applies to the applicability to only the application 2600594 for Vulcan Access Road and would require submittal of the Water Quality Impact Assessment as part of the approval process.

Mr. Overbey seconded the motion.

Mr. Beauch stated he could not support the motion because it assumed that the 2004 determination could be changed.

Mr. Overbey stated the only item before the Board was Ms. Hudson determination.

Mr. Beauch stated the Board would require the Chesapeake Bay Act on a road, which was part of a development already vested.

Ms. Kirkman opposed the motion because it was redundant and would not resolve the issue.

Mr. Levy stated he agreed with Ms. Kirkman's statement.

Mr. Ingalls stated this issue would come back before the Board because there were many issues to be resolved.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Vote:

The motion to substitute the original motion failed 3-4.

Mr. Ackermann – yes
Ms. Kirkman – no
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – no
Mr. Levy – no
Mr. Beauch – no

Motion:

Ms. Kirkman made a motion to uphold the Zoning Administrator's determination

Vote:

The motion to uphold the determination failed 2-5.

Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – no
Mr. Overbey – no
Mr. Gibbons – no
Mr. Levy – no
Mr. Beauch – no

Motion:

Mr. Beauch made a motion to find in favor of the appellant and support the appeal.

Mr. Overbey seconded the motion.

Mr. Beauch stated he made the motion because it was clear the applicant was aggrieved and the time limit had expired to change the 2004 determination and the 2007 determination letter attempts to do that.

Mr. Levy stated the motion should state the Board reversed the decision of the Zoning Administrator.

Mr. Beauch accepted the friendly amendment to the motion.

Vote:

The motion to reverse the decision of the Zoning Administrator passed 5-2.

Mr. Ackermann – no
Ms. Kirkman – no

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – yes

A08-3/2800053 - H. CLARK LEMING - Appeal of the Zoning Administrator's determination letter dated December 10, 2007, regarding vesting of Stafford County Code, Section 28-62, "Chesapeake Bay Preservation Area Overlay District", for Vulcan Quarry Westlake Access Road.

Mrs. Musante read the staff report.

Mr. Leming stated he was representing GHA Westlake and GHA was the underlying property owner of the land of which the Road would cross. He stated all parties discussed the location and all aspects of the road and the purpose of the road was to serve the Vulcan Quarry site and the property across which it runs. He stated there was no work to the road for years because neither party had moved ahead; Vulcan had moved ahead and would construct the road. He stated throughout the application, GHA Westlake was required to consent to all parts of the application. He stated all of the argument regarding their ability to contest the determination was amplified by Mr. Judy's memorandum. He stated all the other arguments from the previous application were the same.

Ms. Kirkman asked if GHA had submitted any site plans.

Mr. Leming stated GHA was a participant in the road plan application, consent, and sign off on the road plan application. He stated GHA was a party to the previous appeal before the Board and complied with the proffers for that property.

Ms. Kirkman asked if GHA was part of the Vulcan Road application.

Mr. Leming stated GHA had to consent to the entire application.

Ms. Kirkman asked if Westlake Development had to sign off on the application.

Mr. Leming stated Westlake Development was the applicant.

Ms. Kirkman stated she was referring to the road application.

Mr. Leming stated no.

Ms. Kirkman asked if GHA signed off for the road that had been built for which Water Quality Assessment was done.

Mr. Leming stated yes.

Mr. Judy stated he would like to incorporate all of his previous arguments to this case.

Motion:

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Beauch made a motion to reverse the decision by the Zoning Administrator.

Mr. Levy seconded the motion.

Mr. Beauch stated all of his arguments were the same as the previous case.

Ms. Kirkman stated she opposed the motion and did not feel GHA had standing regarding the 2007 determination for the Vulcan Road. She stated GHA signed off on the application for the road project, which was completed, and the subject of the determination was whether a Water Quality Impact Assessment needed to be completed; that assessment had already been completed. She stated GHA was a party to that process and never withdrew consent. She stated GHA had failed to prove they were aggrieved and did not believe the 2004 determination had validity, which did not specify parcels and vaguely referred to developments. She stated the state did not authorize Zoning Administrators to make determinations regarding the Chesapeake Bay Act.

Mr. Levy stated he would agree with Ms. Kirkman if the December 2007 determination only pertained to roadway but it pertains to roadway(s), plural, which was why he was in favor of the motion.

Mr. Ingalls stated the December 2007 determination did not indicate any tax map numbers.

Vote:

The motion to reverse the decision of the Zoning Administrator passed 5-2.

Mr. Ackermann – no
Ms. Kirkman – no
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – yes

UNFINISHED BUSINESS

Mrs. Musante asked for clarification of when the Order of Business document was to be given out.

Mr. Ackermann stated it should be provided in the package.

REPORT BY ZONING ADMINISTRATOR

None

Ms. Kirkman asked what was coming up for the May and June meetings.

Ms. Musante summarized the cases to be presented.

ADOPTION OF MINUTES

***Stafford County Board of Zoning Appeals
April 22, 2008***

February 26, 2008

Motion:

Ms. Kirkman made a motion to approve the February 26, 2008 minutes as presented.

Mr. Overbey seconded the motion.

Vote:

The motion to approve passed 6-0-1 abstention.

Mr. Ackerman – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – abstained

March 25, 2008

Motion:

Ms. Kirkman made a motion to approve the March 25, 2008 minutes as presented.

Mr. Overbey seconded the motion.

Vote:

The motion to approve passed 7-0

Mr. Ackerman – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – yes

OTHER BUSINESS

Mr. Gibbons recommended nametags for the Board of Zoning Appeals members or County identification.

Ms. Kirkman agreed with Mr. Gibbons.

Ms. Hudson stated she would check with the Director of Planning and Zoning.

***Stafford County Board of Zoning Appeals
April 22, 2008***

Mr. Gibbons recommended a revision of the Bylaws to reflect at the beginning of each the meeting there be a disclosure from the Board of Zoning Appeals member that may have had any contact with the applicants.

Ms. Kirkman stated she fully supported that recommendation.

Mr. Ackermann stated any suggestion for revisions should be brought up at the next meeting.

Ms. Kirkman asked if staff could revise the bylaws and have the County Attorney review the language.

Mr. Overbey asked what the date of the June was meeting.

Mr. Levy stated June 24, 2008.

Ms. Kirkman stated upon arrival to the meeting each Board of Zoning Appeals member had a letter from Mr. Ackermann, Chairman of the Board of Zoning Appeals, which was a letter of commendation for an employee. She stated she agreed the employee had done a wonderful job, she felt the Chairman should get a decision from the full Board and does not feel the Board should get in the business of evaluating staff performance. She requested the Board of Zoning Appeals not do this in the future.

Mr. Ackermann stated it had been discussed at a previous meeting and would discuss with the Board in the future.

ADJOURMENT

Motion:

Mr. Overbey made a motion for adjournment.

Ms. Kirkman seconded the motion.

The meeting was adjourned at 9:45 p.m.

Ernest Ackermann, Chairman
Board of Zoning Appeals